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Department of the Treasury
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Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:ITA:B01
PLR-129202-07

Date:
August 28, 2008

In Re:

EIN:

TY:

LEGEND:

Foreign Parent =

F Sub 1 =

U.S. Parent =

Seller =

$$F_{\text{Sub } 2} =$$

Target =

Sub 2 =

Buyer =

Holdco =

Company A =

Company B =

State X =

Country Y =

M Business =

a =

b =

c =

d =

e =

f =

g =

h =

x =

y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear :

This is in reply to your letters dated June 14, 2007, January 11, 2008, March 20, 2008, and April 16, 2008, requesting rulings on certain transactions leading up to a spinoff transaction that occurred on Date 7 (the “Date 7 Spinoff”), and the effect of those transactions in later years. This letter supersedes our letter to you dated July 5, 2008. Concurrent with this letter ruling, we are issuing a separate letter ruling (PLR-129219-07) addressing certain other issues raised by these same events.

Foreign Parent is a publicly traded Country Y corporation and is the parent of a multinational group of companies.

U.S. Parent is a State X corporation and the common parent of an affiliated group that files consolidated returns. All of U.S. Parent’s outstanding stock is owned by F Sub 1, a Country Y entity wholly-owned by Foreign Parent. F Sub 1 elected to be treated for federal tax purposes as a disregarded entity of Foreign Parent, effective as of the date of its formation.

Seller is a State X corporation and a second-tier subsidiary of U.S. Parent. Before the transactions herein described, Seller owned a percent of the stock of Target corporation. Target has b wholly-owned U.S. subsidiaries (Target and its U.S. subsidiaries will be referred to hereafter as the “Target Subgroup”). F Sub 2, a second-tier Country Y subsidiary of Foreign Parent, owned the remaining c percent of Target stock.

Buyer is a Country Y entity wholly-owned by Foreign Parent. Buyer elected to be treated for federal tax purposes as a disregarded entity of Foreign Parent. Buyer did not engage in any activities prior to the transactions described herein.

On Date 1, Foreign Parent announced that it planned to reorganize its M Business through reorganizing those corporations that were conducting the M Businesses. Target corporation, the members of the Target Subgroup, and various foreign

subsidiaries of Foreign Parent are engaged in the M Businesses. Pursuant to its planned reorganization, Foreign Parent transferred these entities to a newly incorporated Country Y holding company (“Holdco”), which became the parent of all the entities conducting the M Businesses (the “M Business Group”). Foreign Parent then distributed Holdco on Date 7, along with the M Business Group, to its shareholders.

Prior to the Date 7 Spinoff, Foreign Parent consummated the following transactions in furtherance of the spinoff:

- (i) Foreign Parent activated Buyer, a shelf entity. Buyer elected to be treated as a disregarded entity for U.S. tax purposes pursuant to § 301.7701-3(c), effective as of Date 3. Foreign Parent contributed sufficient cash to Buyer to fund the acquisition of Target stock, as described in paragraph (iv), below.
- (ii) On Date 4 and Date 6, Sub 2 (a member of U.S. Parent’s consolidated group and a sister company of Seller), entered into the Retiree Benefit Agreements (“RBAs”) with a member of the Target Subgroup, wherein Sub 2 agreed to be responsible for the future payments of certain contingent retirement liabilities of the Target Subgroup, which liabilities included the following benefits: medical, life insurance and nonqualified deferred compensation, with respect to Target Subgroup employees who retired before Date 2 (collectively, the “Retiree Benefits”).¹
- (iii) On Date 8, Seller and Sub 2 entered into a written agreement, in which Seller agreed to pay for the costs of the Retiree Benefits as well as the costs of administering those payments (Retirement Benefit Funding Agreement, or “RBFA”). The agreement required seller to pay Sub 2 for any payments made by Sub 2 under the RBAs, including payments made before Date 8.
- (iv) Pursuant to the SPA, Seller and a subsidiary agreed to indemnify Buyer for specified x type and y type obligations of the Target Subgroup. Seller agreed to indemnify Buyer for g percent of certain x type liabilities of members of the Target Subgroup. Seller funded this obligation by a payment to its subsidiary, which assumed responsibility with respect to the x type liabilities and also entered into a separate supplemental indemnity agreement with a Target subsidiary with respect to the x type liabilities. Seller also agreed to indemnify Buyer for h percent of certain y type obligations of the members of the Target Subgroup. The obligation to indemnify the Target Subgroup for the costs of satisfying contingent x type and y type liabilities is capped at the amount that Seller received for the Target stock. The parties to the SPA agreed that any

¹ The federal income tax treatment of the assumption of certain benefits of Company A and Company B employees pursuant to the RBAs is not included in the scope of this ruling request.

payments under these indemnity agreements would be treated as adjustments to the purchase price of the Target stock.

- (v) Pursuant to Section 8.7 of the SPA, Buyer, Target, and members of the Target Subgroup agreed to pay to Seller the amount of any tax benefit inuring to Buyer, Target, or the members of the Target Subgroup, resulting from an accrual or payment by Seller, Sub 2, or any of Seller's affiliates with regard to those obligations of any member of the Target Subgroup stemming from the RBAs. Pursuant to Section 8.7(d) of the SPA, the parties to this agreement agreed that any such payments for such tax benefits would be treated as adjustments to the purchase price of the Target stock.
- (vi) On Date 7, Foreign Parent transferred the stock of Buyer, which owned the Target Subgroup, to Holdco, a recently activated foreign "shelf entity," and then on that same day distributed Holdco stock to its shareholders (the "Date 7 Spinoff").

Seller incurred a loss as a result of the sale of its Target stock. See PLR-124345-06.

Under the facts provided, Sub 2's promises to the Target Subgroup to undertake the responsibility for the payment of the Retiree Benefits obligations, in conjunction with Seller's promise to Sub 2 to pay for these amounts, will be treated as promises having been made in exchange for a constructive issuance by Target of its stock. The constructively issued Target stock will be treated as if it had the same terms and conditions as the Target stock historically owned by Seller.

Taxpayer's Representations

Taxpayer represents that the parties intended for the RBAs to make Sub 2 (and indirectly Seller, by virtue of the RBFA) the primary obligor with respect to the retiree Benefits. In the event a court were to conclude that Sub 2 (and indirectly Seller) was not the primary obligor, the RBAs also included an agreement that Sub 2 (and indirectly Seller) would indemnify Target with respect to the Benefits and any associated litigation costs.

Further, Taxpayer represents that it has excluded from its ruling request the provision of any benefits by means of a welfare benefit fund within the meaning of section 419(e).

Ruling

Based solely on the information submitted, this office rules on the above described transactions as follows:

- (1) Except as provided in Ruling 2, below, no income, expense, gain, or loss will be recognized by Target or any member of the Target Subgroup as a result of any of the payments made by Sub 2 with regard to the Retiree Benefits, as well as the associated expenses, which are required under the RBAs and paid for by Seller pursuant to the RBFA. Nor, except as provided in Ruling 2, will Target or any member of the Target Subgroup recognize any income, expense, gain, or loss as a result of the agreement between Sub 2 and members of the Target Subgroup under which Sub 2 agrees to assume the responsibility for making payments with regard to the Retiree Benefit obligations of Target and other members of the Target Subgroup. Section 1032 or Section 118 of the Internal Revenue Code.
- (2) In fulfilling the undertaking to provide Retiree Benefits under the Retirement Benefit Agreements and the Retirement Benefit Funding Agreement, Sub 2 and Seller will be treated as acting on behalf of Target in satisfying Target's liabilities incurred with respect to its employees in Target's trade or business (or on behalf of another member of the Target Subgroup in satisfying that member's liabilities incurred with respect to its employees in that member's trade or business). Payments made by Sub 2 or Seller in fulfilling the obligations under the RBAs and the RBFA are not regarded as reimbursements that would reduce or offset the deductions to which the Target Subgroup is entitled. Accordingly, Target or another member of the Target Subgroup, not Seller or Sub 2, will be entitled to ordinary deductions resulting from the provision of the Retiree Benefits on its behalf under the RBAs and the RBFA, at the times and in the amounts provided for under the provisions of the Code that relate to the benefit in question, which provisions may include, but are not necessarily limited to, §§ 162, 404, 409A, and/or 461.

Caveats

We express no opinion concerning the federal tax consequences of the proposed transactions under any other provision of the Code or regulations, or concerning any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, we express no opinion as to the specific timing and amount of the ordinary deductions available to the Target Subgroup by virtue of the provision of the Retiree Benefits to retirees by Seller and Sub 2—which timing and amount, depending on the nature of the benefit in question and the specific facts and circumstances, may be governed by various provisions of the Code, including, but not necessarily limited to, §§ 162, 404, 409A,

and/or 461. Further, this ruling does not address the tax consequences of payments or contributions to any welfare benefit funds within the meaning of section 419(e).

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Andrew Irving
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: